

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 849 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHHANABHAI DAHYABHAI PATEL.

Versus

MOHANBHAI DAYALJI NAIK, SINCE DECEASED THROUGH HIS HEIRS.

Appearance:

MR JITENDRA M PATEL for Petitioners
SERVED BY RPAD - (R) for Respondent No. 1
FRESH NOTICE REQD(R) for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 14/06/1999

ORAL JUDGEMENT

This petition purporting to be under Article 226 of the Constitution challenges the judgment and order dated 7-11-1978 passed by the Gujarat Revenue Tribunal allowing revision application No. TEN.B.S. 402/77 under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2. The land in question, which is the subject matter of this petition, is survey No. 18/3 admeasuring 0 Acre 9 Gunthas in the sim of village Ichhapore, Taluka Gandevi. The petitioners herein had filed an application before the Mamlatdar & ALT (hereinafter referred to as "the Mamlatdar" or "the ALT"), Gandevi on 8-4-1974 stating that the disputed land was being cultivated by them since last 25 years and that they had planted mango trees in the said field and were giving half share of the fruits to the respondents herein and for the rent for cultivation of the land they were giving Rs.20/- per year to the respondents, but as their names were not entered in the revenue record and the respondents demanded possession from them, the petitioners filed an application under Section 70(b) for a declaration that they were tenants of the disputed land. By his order dated 15-5-1975 the Mamlatdar declared that the petitioners were tenants of the disputed land. The appeal filed by the respondents herein was partly allowed by the Deputy Collector and the matter was remanded to the Mamlatdar. After the remand, the Mamlatdar again held that the present petitioners were the tenants of the disputed land. The appeal against the said order was dismissed by the Deputy Collector and, therefore, the respondents herein filed the above numbered revision application before the Tribunal. After hearing the arguments of the learned advocates for the parties, the Tribunal allowed the revision application and set aside the orders of the Mamlatdar and Deputy Collector and the Tribunal held that the present petitioners had failed to prove that they were tenants of the disputed land. It is against the aforesaid judgment and order that the present petition is filed. Although the petition purports to be one under Article 226 of the Constitution, it appears that the petition is really speaking under Article 227 of the Constitution.

3. It is brought to the notice of this Court that the land was originally owned by respondent No. 1 Mohanbhai Dayalji Naik who had already expired and his heirs were brought on record way back in 1984 and that the land was sold by respondent No. 1 even before initiation of the proceedings under the Tenancy Act to Lallubhai Naik, the father of respondent No. 2. It appears that Lallubhai Naik had expired before initiation of the proceedings and, therefore, his son Govanbhai was joined as respondent No. 2. During pendency of this petition, Govanbhai Lallubhai Naik has also expired and, therefore, his heirs were permitted to be brought on record as per this Court's order dated 21.11.1995 in Civil Application No. 2464/94. It appears from the

endorsement of the office that the notice of Rule was not issued to the heirs of deceased respondent No. 2. However, since this Court is not inclined to disturb the judgment of the Tribunal, which is in favour of the present respondents, the Court is not inclined to adjourn the hearing of this petition which is pending on the file of this Court since 1979. Even after the heirs of respondent No. 2 were permitted to be brought on record, no attempt has been made to serve the said heirs. The petition has been listed on the final hearing board from time to time since 1995. Therefore also, the Court does not think it fit to adjourn the hearing of this petition. Under the circumstances, the Court has proceeded to decide the matter.

4. The Tribunal has given following cogent reasons for interfering with the orders of the Mamlatdar and the Deputy Collector and for holding that the present petitioners failed to prove that they were tenants of the land in question :-

(i) The land in question is at Gandevi whereas petitioner No. 1 Chhanabhai Dahyabhai Patel is shown to have been serving at Navsari. Petitioner No. 2 Prabhubhai Babarbhai is also shown to have been serving at Navsari. Their brother Vasanjibhai Purshottambhai is shown to have been serving as a teacher at Maroli. Petitioners Chhanabhai and Prabhubhai were at the relevant time serving in the mills at Navsari and the third brother was at the relevant time serving as teacher at Maroli. Hence, it is not possible to believe that the disputed land was given to them on lease and they were inducted as tenants by the respondents herein.

(ii) The land in question admeasures only 9 Gunthas with about 7 mango trees and 2 kalbi mango trees. Out of them, 1 big mango tree covers as much as 3 to 4 Acres of land and, therefore, no cultivation is possible thereon. Even on the remaining land, there are mango trees and the petitioners' witness Vasanji himself admitted that at the relevant time when the land is alleged to have been given on lease to them, no cultivation was done on the land in question. Even the Mamlatdar's inspection note shows that no crops were grown on the land in question. Even the petitioners admitted that the land is practically occupied by mango trees and no cultivation is possible on the disputed land.

(iii) The entries in the revenue record also show that there was no cultivation whatsoever on the disputed land.

(iv) Even the case of the petitioners before the revenue authorities was that by cultivation they had grown 7 mango trees and 12 kalbi mango trees after putting manure and that they were giving half share of the fruits to the applicants. In evidence, petitioner No. 1 Chhanabhai admitted that 7 mango trees were there from the very beginning and that they were more than 50 to 60 years old.

(v) The petitioners admitted that they filed the application for claiming tenancy rights in the disputed land only after respondent No.1-original owner entered into an agreement to sell the land to Lallubhai, the father of respondent No. 2. The petitioners were in need of more land for their residential accommodation, the disputed land abuts the residential accommodation of the petitioners and the Tribunal drew an inference that it was on account of the failure of the petitioners to get the land from respondent No.1-original owner that they had filed the present application under Section 70(b) of the Tenancy Act to bring undue pressure on the respondent.

(vi) The petitioners had produced certain documents such as bills, for the purchase of urea manure and for the water charges, purporting to be of the year 1953 and 1954 to support their claim that they were tenants cultivating the disputed land since long. The Tribunal found that there were interpolations in the bills and because of such interpolations the bills of 1973-1974 were shown to be of 1953-1954. In the first round the Mamlatdar had relied upon such documents produced by the petitioners ex-parte without proving the same and without the respondents getting an opportunity of meeting with such documents. After the order of remand certain witnesses were examined to prove such bills but the Tribunal found that it was not possible to rely upon such witnesses who had given evidence in support of the bills having interpolations.

(vii) The Mamlatdar and the Deputy Collector had thrown

the burden of proof on the respondents to show that the petitioners were not tenants. The Tribunal rightly held that it was for the petitioners to prove that they were tenants.

5. The aforesaid reasons are given by the Tribunal in support of its conclusion that the petitioners had failed to prove that they were tenants of the disputed land. In a petition whether under Article 226 or under Article 227 of the Constitution, it is not possible to interfere with such findings of fact which are supported by the aforesaid cogent reasons given by the Tribunal.

6. The thrust of the submissions of the learned counsel for the petitioners is that as a revisional authority the Tribunal had no jurisdiction to set aside the concurrent findings of fact reached by the Mamlatdar and the Deputy Collector. In this connection, a reference may be made to the provisions of Section 76 of the Tenancy Act. It clearly empowers the Tribunal to correct the order of Collector (Deputy Collector) on the following grounds namely - (a) that the order of the Collector was contrary to law, (b) that the Collector failed to determine some material issue of law, or (c) that there was a substantial defect in following the procedures provided by this Act or that there has been failure to take evidence or error in appreciating important evidence which has resulted in the miscarriage of justice.

Sub-clause (c) of sub-section (1) of Section 76, quoted hereinabove, thus clearly empowers the Tribunal to correct the error in appreciating important evidence which has resulted in the miscarriage of justice. The revisional jurisdiction under Section 76 (1) of the Tenancy Act is thus wider than the revisional jurisdiction under Section 115 of the Civil Procedure Code.

7. Mr Patel, learned counsel for the petitioners has, however, relied on the decision of this Court in Raj Madhavsang vs. Ranchhodbhai, XVII GLR 689 wherein this Court observed that the correction of an error in appreciating important evidence which has resulted in the miscarriage of justice cannot be equated with the power to reappreciate the entire evidence. There can be no disagreement with the said principle. However, the Tribunal is certainly vested with the power to correct the error in appreciating important evidence which has resulted in the miscarriage of justice. It is pertinent to note that the orders of the revenue authorities

holding the petitioners to be tenants only proceeded on the footing that the tenants are not likely to have any documentary evidence and, therefore, the oral version of the petitioners must be accepted. However, the Tribunal has given the aforesaid cogent reasons for setting aside the orders of the Mamlatdar and Deputy Collector and the said reasons cannot be said to be mere reappreciation of evidence. The Tribunal rightly found that the revenue authorities had committed serious error in appreciating important evidence which had resulted in the miscarriage of justice. The findings given by the Tribunal are findings of fact. Even if the inferences drawn from the facts on record can be said to be findings on mixed questions of law and fact, it is not open to this Court to interfere with such findings in exercise of the jurisdiction under Article 226 or 227 of the Constitution. The petition, therefore, deserves to be dismissed.

8. The petition is accordingly dismissed.

Rule is discharged with no order as to costs.

June 14, 1999 (M.S. Shah, J.)

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